MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

ULS1612 – LEGAL SKILLS

(All Sections / Groups)

04 March 2019
Reading Time : 9.00 a.m – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 a.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. You are required to answer ONE QUESTION question in Part A and answer ALL THREE questions in Part B. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are not allowed to bring in any statute into the Examination Hall.

5. Please write all your answers in the Answer Booklet provided.

PART A (ANSWER ONE(1) QUESTION ONLY)

QUESTION 1

> "With so many channels to consider, figuring out which one to focus on is tough. That's why we've created a simple framework called Bullseye that will help you find the channel that will get you traction."
>
> (Brian Balfour,2014)

Explain the Bullseye Method, its benefits and steps.

(Total:25 marks)

QUESTION 2

Explain the primary and secondary sources of law.

(Total:25 marks)

PART B (ANSWER ALL)

QUESTION 3

You are engaged as a legal assistant in Messrs Dhillon & Associates. A senior partner at the firm is unhappy with the way client interviews are conducted at the firm. He says that there is no proper structure of conducting client interviews at the firm and he is quite ashamed about this as the firm has been in existence for the last 20 years.

The senior partner has asked you to prepare a proper checklist on how client interviews should be conducted. He stresses that the checklist prepared will become the blueprint for all lawyers practicing at the firm. In addition to the client interview checklist, the senior partner requests that you provide a short explanation on each of the items that are highlighted in the checklist.

(Total:25 marks)

Continued...

QUESTION 4

Ms Britney drank a bottle of rootbeer purchased for her by her friend at a cafe in Bukit Beruang. The bottle, which contained the decomposed remains of a cockroach, was manufactured by the defendant Mr Francis Fernandez. The bottle was opaque in colour and sealed so the cockroach could not be detected until Ms Britney had already consumed a large part of the rootbeer. She claimed to suffer from shock and severe gastroenteritis as a result of the incident.

The contract of sale to purchase the rootbeer was between Ms Britney's friend and the shop owner, so there was no direct contractual relationship between Ms Britney (herself) and Mr Francis Fernandez (the manufacturer).

Prepare a written opinion to advise Ms. Britney on the manufacturer's liability based on the above. Use fictional address and endorsement to draft the written opinion above.

(Total:25 marks)

QUESTION 5

Ah Thian v Government of Malaysia - [1976] 2 MLJ 112

SUFFIAN LP

This application is before me in my capacity as a judge of the Federal Court.
The applicant was charged with committing armed robbery under sections 392 and 397 of the Penal Code, an offence punishable under section 5 of the Firearms (Increased Penalties) Act 37 of 1971 as amended.
If convicted he is liable to imprisonment for his natural life and with whipping with no less than six strokes.
Also charged with him was one Ooi Chooi Toh who figured in the case of Ooi Ah Phua v OCCID Kedah/Perlis [1975] 2 MLJ 198.
The applicant's counsel argued that the Firearms (Increased Penalties) Act 37 of 1971 as amended by the Firearms (Increased Penalties) (Amendment) Act A256 of 1974 is " ultra vires the Federal Constitution as it contravenes article 8(1) of the Constitution and is therefore void".
Article 8(1) reads-
"All persons are equal before the law and entitled to the equal protection of the law."

Continued...

On March 30, 1976, at the close of the case for the prosecution, counsel for the applicant applied for an adjournment to enable him to obtain the leave of a judge of the Federal Court to start proceedings for a declaration that the Act is void for the reason already stated. The application was granted, hence this application before me. It is said that the application is made under article 4(4) of the Constitution.

The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

Under our Constitution written law may be invalid on one of these grounds:
(1) in the case of Federal written law, because it relates to a matter with respect to which Parliament has no power to make law, and in the case of State written law, because it relates to a matter which respect to which the State legislature has no power to make law, article 74; or
(2) in the case of both Federal and State written law, because it is inconsistent with the Constitution, see article 4(1); or
in the case of State written law, because it is inconsistent with Federal law, article 75.
The court has power to declare any Federal or State law invalid on any of the above three grounds.
The court's power to declare any law invalid on grounds (2) and (3) is not subject to any restrictions, and may be exercised by any court in the land and in any proceeding whether it be started by Government or by an individual.
But the power to declare any law invalid on ground (1) is subject to three restrictions prescribed by the Constitution.
First, clause (3) of article 4 provides that the validity of any law made by Parliament or by a State legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant legislature has no power to make law, except in three types of proceedings as follows: -
(4) in proceedings for a declaration that the law is invalid on that ground; or
(b) if the law was made by Parliament, in proceedings between the Federation and one or more states; or
(c) if the law was made by a State legislature, in proceedings between the Federation and that State.
It will be noted that proceedings of types (b) and (c) are brought by Government, and there is no need for anyone to ask specifically for a declaration that the law is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. The point can be raised in the course of submission in the ordinary way. Proceedings of type (a) may however be brought by an individual against another individual or against Government or by Government against an individual, but whoever brings the proceedings must specifically ask for a declaration that the law impugned is invalid on that ground.

Continued...

Secondly, clause (4) of article 4 provides that proceedings of the type mentioned in (a) above may not be commenced by an individual without leave of a judge of the Federal Court and the Federation is entitled to be a party to such proceedings, and so is any State that would or might be a party to proceedings brought for the same purpose under type (b) or (c) above. This is to ensure that no adverse ruling is made without giving the relevant government an opportunity to argue to the contrary.

Thirdly, clause (1) of article 128 provides that only the Federal Court has jurisdiction to determine whether a law made by Parliament or by a State legislature is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. This jurisdiction is exclusive to the Federal Court, no other court has it. This is to ensure that a law may be declared invalid on this very serious ground only after full consideration by the highest court in the land.

The applicant wants to attack the validity of the Firearms (Increased Penalties) Act not on the ground that it relates to a matter with respect to which Parliament has no power to make law. In my judgment, this Act deals with criminal law and the administration of justice, both matters with respect to which Parliament has power to make law (see item 4 of List I in the Ninth Schedule to the Constitution). The applicant says that the Act is invalid because it is inconsistent with the Constitution, i.e. on ground (2) set out in paragraph 9 above. Therefore, clause (4) of article 4 and clause (1) of article 128 do not apply and the point may be raised in the ordinary way in the course of submission, and determined in the High Court, without reference to the Federal Court, and there is no need for leave of a judge of the Federal Court.

True the learned judge has power under Section 48 of the Courts of Judicature Act 1964 (L.M. Act 91) to stay the proceedings before him and refer a matter like this to the Federal Court. He has not however done so in this case (this is an application by the accused). But in any event matters like this as a matter of convenience and to save the parties time and expense are best dealt with by him in the ordinary way, and the aggrieved party should be left to appeal in the ordinary way to the Federal Court.

If the learned judge had done that here, the applicant and his co-accused would have been acquitted or convicted by now. As it is, in 1976 they are still being tried for an offence which they are alleged to have committed on December 26, 1974.

My order on the application is that this matter be remitted back for continuation of trial by the High Court.

Order accordingly.

Continued...

Based on the above grounds of decision from the Federal Court, you are required to prepare a case note. Your case note shall include the following: -

(a) Material facts of this case;

(10 marks)

(b) Issue(s) or question(s) arising;

(5 marks)

(c) Decision of the federal court;

(5 marks)

(d) Ratio decidendi of the case.

(5 marks)

(Total: 25 marks)

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